



Interim Management’s Challenges with Labor Laws

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Interim managers are take-charge types with strong inclinations toward quickly assessing situations and developing and rapidly implementing solutions. Almost by definition, they are thrown into troubled companies and challenged to “turn things around” in short order. Often, this can mean taking tough measures, such as reducing staff through planned layoffs.

We frequently serve in the capacity as interim managers and write to share certain lessons learned and best practices that may be gleaned therefrom. These sorts of decisions will bring the interim managers into contact with their labor counsel to assess concerns and issues related to WARN (Worker Adjustment and Retraining Notification Act) requirements, state laws addressing layoffs and collective bargaining agreement provisions related to “bumping” rights. Interim managers are very familiar with these concepts; however, what is not always known is how these issues also can come to the fore when organizations are looking to maximize efficiency and productivity in their labor forces outside of making layoffs. Indeed, interim managers need to proceed with caution, for such seemingly easy decisions related to simple cost-saving initiatives can be fraught with complications related to state and local labor laws.

Overtime: Productive?



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One experience with a particular client is instructive. The client, an urban critical-access hospital, was experiencing increased year-over-year overtime costs. Line management attributed the rise to the inability to recruit qualified staff. After much analysis related to the underlying causes driving the higher overtime costs, two specific areas within the hospital were identified wherein it was thought that savings could be achieved by implementing some fairly simple changes in the way that employees clocked in and out of their shifts. The remedy was thought to be cheap and easy to implement — a perfect value-add!



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Clocking Out

The apparent solution was to consolidate timekeeping clocks from across numerous locations within the facility to ensure that employees showing up prior to or working after a scheduled shift were in fact doing so under their managers' approval to incur such time. This solution was met with strong resistance from the hospital's human resources department based on the applicability of certain labor laws. Undeterred, we arranged a meeting with outside labor counsel, who then proceeded to raise numerous concerns as to the impact of some of our proposed changes.

Roundabout

We had proposed to "lock out" employees from clocking in too early for an unscheduled shift unless authorized by a supervisor. What we found was that changing the rules on the timekeeping clocks ran abreast of labor law and the definitions of "overtime" itself. We soon learned that state law governs how timekeeping clocks can be set up to track employees' overtime hours. For example, an employee might show up several minutes before a shift. The timekeeping clocks can be set to round this time to certain time increments without giving credit to the employee for the minutes prior to the hour. Without being too specific (each state's labor laws can be different), state law determined what the cut-off should be for rounding. If an employee showed up more than a certain number of minutes before a shift, his or her hours would be rounded up to the nearest quarter hour; if less, they were rounded down.

It was important to understand what records the timekeeping clocks were keeping and whether they complied with the law. It was also important that the clocks were treating the front and back ends of a shift consistently. One cannot round down at the beginning and round up at the end, or vice versa. As interim managers, we were simply trying to aggregate the savings of a few minutes on the front and back ends of shifts of several thousand employees at a facility operating 24/7/365. The cost-saving rationale was appropriate, but the issue turned out to be more complicated than it appeared on the surface.

This is just one example of where the exuberant interim manager with his or her eye on incremental savings can run afoul of the law, even with the best of intentions in mind. With the help of our labor counsel, we were able to navigate the issues effectively, and ultimately, with our clock-consolidation plan — combined with the appropriate timekeeping clock setup and a clear employee communication plan — we achieved significant savings for the client. It just goes to show that solutions aren't always easy but can still be just as effective.

New federal, state and local labor laws are implemented all the time, and existing laws are frequently updated or modified. It is important for interim managers to work with their human resources departments and outside labor counsel whenever their prescriptive measures for cost savings and increased profits concerns the organization's workforce. Indeed, new laws (*e.g.*, City Sick Law in New York City) can create conflicts with an organization's benefits policies where none existed previously.

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Conclusion

Interim-management teams often are eager and ready to roll up their sleeves and implement policy changes that look to achieve bottom-line savings. Where labor is concerned, they are best advised to seek the advice of labor counsel and their human resources departments to achieve the desired results while adhering to evolving laws.

For ABI Members you can view the article here:

<https://www.abi.org/committee-post/interim-management%E2%80%99s-challenges-with-labor-laws>

